

Before the Surface Transportation Board

East Tennessee Railway, L.P.)
 - Exempt Abandonment -) STB Dkt. No.
 in Washington and Carter) AB-1031X
 Counties, TN)

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Request for Public Use Conditions

Pursuant to 49 C.F.R. 1152.28, City of Johnson City, Tennessee ("City") requests that this Board issue a public use condition barring East Tennessee Railway, L.P. ("ETR"),

(1) from removal or destruction of any and all bridges, culverts, or roadbed on the line at issue in this proceeding,

and (2) from selling or otherwise transferring any interest ETR holds, if any, in the underlying real estate in the line at issue in this proceeding, other than for public uses for 180 days from the effectiveness of any abandonment authority granted in this abandonment proceeding.

1. Condition sought. As stated above, City seeks a condition barring East Tennessee Railway, L.P.,

(1) from removal or destruction of any and all bridges, culverts, or roadbed on the line at issue in this proceeding,

and (2) from selling or otherwise transferring any interest ETR holds, if any, in the underlying real estate in the line at issue in this proceeding, other than for public uses

for 180 days from the effectiveness of any abandonment authority granted in this abandonment proceeding.

2. The public importance of the condition. The line at issue in this proceeding extends from railroad milepost 1.2, at or near Johnson City, to end of line at railroad milepost 11.2, at or near Elizabethton, a distance of 10 miles, in Washington and Carter Counties, TN. This line would make an excellent trail and greenway facility for residents as well as visitors to the region, providing a splendid opportunity for outdoor bicycle commuting and for general outdoor recreational uses in the two counties. In addition, it merits preservation for possible future rail reactivation. City of Johnson City already has filed a "statement of willingness" invoking the application of 16 U.S.C. 1247(d) ("railbanking") in connection with the line, and is actively pursuing negotiations for acquisition of the line, including all bridges, culverts and the roadbed for interim trail use and railbanking purposes.¹ The public use condition sought is customary in the circumstances. It is consistent with railbanking the line for a public purpose: preservation of the bridges, culverts and roadbed is not only helpful for interim trail and railbanking uses, but also does not interfere with the railroad's ability to remove track and ties for use elsewhere in

¹ According to the STB website, the "statement of willingness" was filed on November 24, 2009, and the railroad consented to negotiate on December 3, 2009.

its system, or for sale of such materials for the proceeds. Moreover, a bar on non-public disposition of real estate interests is consistent with the City's desire to acquire the property for public purposes.

3. Period of time condition would be effective. City requests that the condition be effective for the statutory maximum of 180 days after the abandonment effective date.

4. Justification for imposition of the time period. The time period requested will not interfere either with salvage activities for the rail and ties, or with closing a transaction between City and the railroad. The City seeks to acquire the bridges, culverts and roadbed, as well as the underlying real estate interests pursuant to 16 U.S.C. 1247(d), and has reiterated previous offers in that regard. On the other hand, the City recognizes that negotiations frequently take more than 180 days, as witnessed by the many applications for extension of the "NITU" negotiation period in similar situations. It is therefore prudent to request the statutory maximum 180 day public use condition period.

Conclusion

For the reasons stated above, the public use condition requested should be issued.

Respectfully submitted,

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Certificate of Service

I hereby certify service on 23 December 2009 by email and by deposit for first class delivery by the U.S. Postal Service upon Eric Hocky, Esq., Thorp Reed & Armstrong, 2005 Market St., Suite 1000, Philadelphia, PA 19103-7041, Attorney for East Tennessee Railway, L.P.

Charles H. Montange